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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,750	01/21/2002	Morton M. Mower	2206-001 C	6121

22208 7590 08/06/2007
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EXAMINER

GETZOW, SCOTT M

ART UNIT	PAPER NUMBER
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3762

MAIL DATE	DELIVERY MODE
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08/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/053,750

Applicant(s)

MOWER, MORTON M.

Examiner

/Scott M. Getzow/

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2007.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-15, 17-20, 22, 24, 25, 34-36, 38, 47, 50 and 58-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-15, 17-20, 22, 24, 25, 34-36, 38, 47, 50, 58-66 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

1. This application is in condition for allowance except for the following formal matters:

Claims 12-15,17-20,22,24,25,34-36,38,47,50,58-66 are allowable. The only question to be resolved prior to allowance is the question of priority of inventorship, which is properly resolved under interference proceedings. The following formal matters must be addressed.

Claim 50 depends, in part, on a cancelled claim.

Withdrawn claims 10,11 must be cancelled prior to referral of interference to the Board, see MPEP 2303 A.

2. Applicant has suggested an interference pursuant to 37 CFR 41.202(a) in a communication filed May 26, 2006.

It is noted that amendments have been made to the claims, and the prior request for interference must be updated to remain commensurate. For example, paragraph A of page 1 of the request states that claims 58-66 are withdrawn. However, they are still active in the case.

Applicant failed to (1) identify all claims the applicant believes interfere, and/or (2) propose one or more counts, and/or (3) show how the claims correspond to one or more counts. See 37 CFR 41.202(a)(2) and MPEP § 2304.02(b).

With respect to the prior request, in particular, there is confusion beginning on page 19 with count 6. Paragraph H.1. refers to count 8; correction is necessary if this is a typo. Further, applicant asserts that claim 22 corresponds to both count 6 and to count 7. As counts must be patentably distinct, it is not clear how the same claims define two

patentably distinct inventions. Both the chart and write up appear to be in error. Further, typos appear with reference to counts 6 and 7 in I.1, and I.2, and J.1.

Applicant's claim charts submitted in fulfillment of 37 CFR 41.202(a)(3) fail to show why the claims interfere within the meaning of 41.203(a). A column should be added to the chart that speaks to the issue. When copied identically, a statement to the effect that the count anticipates the claim is sufficient. When the differences are considered obvious, a statement to that effect should be in the chart. Likewise, the chart may reference the appropriate pages of the request for explanation. Note with respect to proposed counts 3 and 8, where 'means' are recited in the claim, the chart should point out in the specification the support of the 'means' in both the application and the patent to show the claims interfere.

Applicant failed to provide a detailed explanation as to why applicant will prevail on priority. See 37 CFR 41.202(a)(4), (a)(6), (d) and MPEP § 2304.02(c).

First, it must be assumed that the chart presented in Attachment B refers to support in the specification of 10/053,750, as such is the requirement of 37 CFR 41.202a(5). This appears to contradict the statement made in section J.4, page 23, of the request. Second, no chart for 37 CFR 41.202(a)(6) has been provided. See MPEP 2304(c); in particular note if the applicant is relying on a chain of benefit disclosures under any of 35 USC 119, 120, 121 and 365, then the anticipating disclosure must be continuously disclosed through the entire benefit chain or no benefit may be accorded.

Finally, applicant suggests all counts interfere with 6,233,484 and appears on the face to be the senior party to this patent. However, applicant also suggests counts 3 and 4 interfere with 6,317,631 and count 4 additionally interferes with 6,330,476. On

face, applicant is the junior party to these two patents; therefore 37 CFR 41.202(a)(4) is not met with respect to these patents.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire TWO MONTHS from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Scott M. Getzow/ whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/053,750
Art Unit: 3762

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/Scott M. Getzow/
Primary Examiner
Art Unit 3762

SMG